

Appln. No. 10/822,466
Amendment dated December 2, 2005
Reply to Office Action dated September 9, 2005

REMARKS/ARGUMENTS

The foregoing amendments and these remarks are in response to the Office Action, dated September 9, 2005. At the time of the Office Action, claims 1-22 were pending in the present application. Claims 2, 5 and 6 were rejected under 35 U.S.C. § 112, ¶2. Claims 1, 3 and 7 were rejected under 35 U.S.C. § 102(b), and claims 1, 3 and 10 were rejected under 35 U.S.C. § 102(e). Claims 4, 8, 9 and 11-22 were indicated as being allowable if rewritten in independent form. Each of the rejections will be addressed in turn below.

35 U.S.C. § 112

Before discussing the art-based rejections, Applicant will first address the rejection of claims 2, 5 and 6 under 35 U.S.C. § 112, ¶2. With respect to claim 2, the Office Action notes that "the term 'maybe' is confusing because it is unclear whether the single actuation post is attached to a vane extension or not." Claim 2 has been amended by replacing the phrase "maybe" with the word "is." Applicant respectfully submits that claim 2, as amended, overcomes the rejection.

Claim 5 was rejected because "the term 'maybe' is also confusing because it is (sic) unclear whether the flange is part of the turbine housing or not." Claim 5 has been amended to expressly recite that the flange is a part of the turbine housing. Further, new claim 27 recites that the flange is mounted to the turbine housing, reflecting an alternative embodiment in which the flange is not part of the turbine housing. Thus, it is respectfully submitted that amended claim 5 satisfactorily addresses the rejection. Claim 6 was rejected as being dependent on claim 5, but, in light of the above-described amendment to claim 5, it is respectfully submitted that the rejection of claim 6 is moot.

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In light of the above amendments and comments, Applicant respectfully submits that the claim rejections under 35 U.S.C. § 112, ¶2 have been overcome.

Art-Based Rejections

Turning to the art-based rejections, claims 1, 3 and 7 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,657,476 to Berg ("Berg")¹. Claims 1, 7 and 10 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 4,657,476 to Arnold ("Arnold").

As set forth in the listing of claims, independent claims 1, 3 and 7 have all been amended to clarify that a vane post and an actuation post extend from the first planar surface of the vane. That is, the vane post and the actuation post extend from the same side of the vane. Such a structural relationship is not shown or otherwise disclosed in the Arnold and Berg references cited in the Office Action. The drawing figures of Berg clearly show a boss (68) extending outwardly from one side of the vane (48) -- the bottom (54) -- whereas a bolt (26) extends outwardly from the opposite side of the vane (48) -- the top (52). Referring to Figure 5 of Arnold, a similar structure is shown. Arnold shows a tab (64) extending outwardly from one axial surface (58) and a post (68) extending from another axial surface (56), which is opposite to axial surface (58). Therefore, neither Arnold nor Berg meet the recitations of claims 1, 3 and 7, as amended.

The arrangement of the actuation posts (36) and the vane posts (28) on the same side of the vane body in accordance with aspects of the present invention is significant. As an example, the present application noted in paragraph [0016]:

¹ While claim 7 was indicated as being rejected, a detailed basis of the rejection was not presented. In any event, amended claim 7 distinguishes over the cited references for the reasons set forth herein.

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The vanes of the present invention have posts which extend from a planar vane surface and they also receive a post on the same planar vane surface so that the cantilevered loads of the Arnold vanes are avoided. Such vanes are advantageous over previous vanes in that they are less likely to stick even under hundreds of thousands of turbocharger cycles.

In light of the above, it is respectfully submitted that the rejection of claims 1, 3 and 7 based on either Arnold or Berg have been overcome.

Claim 10 was rejected under 35 U.S.C. § 102(e) as being anticipated by Arnold. Claim 10 depends from claim 7. Because claim 7 has been distinguished from Arnold, claim 10 necessarily distinguishes over Arnold for at least the reasons set forth above. Therefore, the rejection of claim 7 is moot.

Applicant also wishes to note that claims 1, 7 and 9-12 have been amended to modify the word "perpendicular" or variations thereof with the term "substantially." These amendments are not made in response to any of the rejections in the Office Action; rather, they are made to clarify Applicant's intended scope. Specifically, it is ideal for the relevant structures to be truly perpendicular to each other, but manufacturing and other considerations make the achievement of true perpendicularity difficult, at best. Therefore, the term "substantially" has been introduced to encompass true perpendicularity as well as slight deviations therefrom.

New Claims

New claims 23-28 are presented to recite additional features of the invention. Each of these claims ultimately depend from either independent claim 1, 3 or 7. Thus, for all of the reasons set forth in connection with claims 1, 3 and 7 above, new claims 23-27 distinguish over Arnold, Berg and the other prior art references of record.


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Conclusion

In light of the foregoing, Applicant respectfully submits that the Examiner's rejections have been overcome. Applicant respectfully requests reconsideration and withdrawal of the rejections of claims 1-3, 5-7 and 10 and allowance pending claims 1-28. A notice to that effect is respectfully requested.

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Respectfully submitted,


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